

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LEON WEINGRAD, et al. :

: Civil Case No. 2:24-CIV-4716

VS.

:

FUND MATE, LLC

and

MENACHEM MINSKY :

Defense Motion to Dismiss Plaintiff's Complaint under Rules 4.(e)(2)(C) and 4.(m)
pursuant to Rule 12(b)(5)

NOW COMES, defendant Menachem Minsky ("Minsky" hereafter) to move the Court to dismiss this case as required by Fed.R.Civ.P. 4.(m) for failing to serve process within the set 90 days after the complaint was filed.

Factual Statements

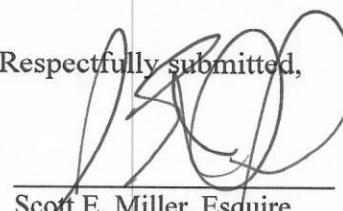
1. This complaint was filed on September 6 , 2024.
2. In mid-December 2024, over 90 days had elapsed since this filing.
3. Almost five (5) months after that date, plaintiff filed a document denoted as an "Affidavit of Substitute Service".
4. This document states in part: "ALTERNATE PERSON (served) By delivering to and leaving with Paulina Romanska the Care Taker to the defendant a true copy thereof... Said address was the Known (sic) of the defendant."
5. In fact, the person called Paulina Romanska ("Romanska" hereafter) is employed by the residential community in which Unit 31 is located as a 'property manager' to the entirety of these residences; Romanska is not Minsky's "Care Taker"; Romanska has no affiliation – be it personal or professional – in any manner with Minsky or any of his relations at the Unit 31; and Minsky does not reside at this community. See,

accompanying good faith statement of counsel as to facts made known to him in this matter.

Law applicable

6. Rule 4.(e)(2)(C) provides in part that: an individual may be served in a judicial district of the United States by delivering a copy of the summons and complaint to an agent authorized by appointment or law to receive service of process.
7. Rule 4.(m) provides in part, as follows: TIME LIMIT FOR SERVICE. If a defendant is not served within 90 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time.
8. “Under Rule 12(b)(5) of the Federal Rules of Civil Procedure, a defendant may move to dismiss when a plaintiff fails to effectuate proper service. Fed. R. Civ. P. 12(b)(5). ‘In resolving a motion under Rule 12(b)(5), the party making service has the burden of demonstrating its validity when an objection to service is made.’ ... If a defendant is not served within 90 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” *Gold Line, Inc. v. OurBus, Inc.*, 2022 U.S. Dist. LEXIS 198037 (M.D.Pa. 2022)
9. Defendant at Bar suggests that the complaint at issue must – and should – be dismissed for all of the reasons set forth above.

Respectfully submitted,



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May ____, 2025